

Strasbourg, 28 June 2002
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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

51st Plenary Session
(26th meeting as a Steering Committee)

Strasbourg, 17-21 June 2002

List of items discussed and decisions taken

1. The European Committee on Crime Problems (CDPC) held its 51st plenary session (26th meeting as a Steering Committee) in Strasbourg from 17 to 21 June 2002 with Mr D. Fontanaud (France) in the chair. The list of participants and the agenda appear at appendices I and II respectively.
2. The CDPC elected Mr Esa Vesterbacka (Finland) and Mr Mario-Michel Affentranger (Switzerland) as members of the Bureau.

Items requiring action by the Committee of Ministers

3. The CDPC unanimously approved the draft Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist or xenophobic nature committed through computer systems and the accompanying explanatory report. The Committee of Ministers is invited to adopt the text of the draft Additional Protocol and to authorise publication of the explanatory report (Addendum I to the present report).

4. Having examined the final activity report of its Reflection Group on developments in international co-operation in criminal matters (PC-S-NS) (Addendum II to the present report), the CDPC adopted specific terms of reference for a Committee of Experts on Transnational Criminal Justice (PC-TJ). The Committee of Ministers is invited to approve these terms of reference (Appendix III to the present report).

The CDPC furthermore adopted ad hoc terms of reference for its Committee of Experts on the Operation of European Conventions in the Penal Field (PC-OC), instructing it to set up a working party for the purpose of proposing follow-up action to the report of the PC-S-NS and drafting, for the attention of the Committee of Ministers, guidelines for the accession of non-member States to European conventions. The Committee of Ministers is invited to approve these ad hoc terms of reference (Appendix IV to the present report).

5. The CDPC revised the specific terms of reference for the Council for Police Matters (PC-PM), to be established as an advisory body to the CDPC. These terms of reference had already been submitted to the Committee of Ministers for approval. At their 794th meeting on 30 April 2002 (item 10.2), the Deputies agreed to resume consideration of this matter at a forthcoming meeting, after the 51st plenary session of the CDPC. The Committee of Ministers is invited to approve the revised terms of reference (Appendix V to the present report).

6. The CDPC re-examined and confirmed the ad hoc terms of reference for the Council for Penological Co-operation (PC-CP) concerning the revision of the European Prison Rules (contained in Recommendation N° R (87) 3). These terms of reference had already been submitted to the Committee of Ministers for approval. At their 794th meeting on 30 April 2002 (item 10.2), the Deputies agreed to resume consideration of this matter at a forthcoming meeting, after the 51st plenary session of the CDPC. In deciding to re-transmit the ad hoc terms of reference to the Committee of Ministers without modification, the CDPC was guided by the following considerations: as the European Prison Rules were prepared by the PC-CP, their revision should also be undertaken by it; the PC-CP is composed of penal practitioners who are best suited to undertake this task; in any case, they will work under the authority of the CDPC which will have to approve the revised Rules before they are submitted to the Committee of Ministers for adoption so that Delegations will have sufficient opportunity to examine them in detail. The Committee of Ministers is therefore again invited to approve these ad hoc terms of reference (Appendix VI to the present report).

7. Having examined the conclusions of the second consultation meeting on the Statute of the International Criminal Court (ICC), held in Strasbourg on 13-14 September 2001, the CDPC adopted specific terms of reference for a Group of Experts for Consultation on the International Criminal Court (PC-S-ICC). The Committee of Ministers is invited to approve these terms of reference (Appendix VII to the present report).

8. The CDPC agreed to extend the terms of reference (expiry 31 December 2002) of the Committees of Experts on the management of life-sentenced and other long-term prisoners (PC-LT) and on new ways of dealing with juvenile delinquency and the role of juvenile justice (PC-JU) until 30 June 2003 so as to enable these two committees to present their final activity reports to the CDPC at its 52nd plenary session in June 2003. The Committee of Ministers is invited to approve the extension of these terms of reference.

9. In pursuance of ad hoc terms of reference assigned to it, the CDPC adopted opinions on Assembly Recommendations

1507 (2001) – fight against economic and transnational organised crime (Appendix VIII to the present report)

1523 (2001) – domestic slavery (Appendix IX)

1531 (2001) – security and crime prevention in cities (Appendix X)

1543 (2001) – racism and xenophobia in cyberspace (Appendix XI)

1545 (2002) – campaign against trafficking in women (Appendix XII)

The Committee of Ministers is invited to take note of these opinions.

Other items

10. Having noted the activities which have been, or are expected to be, finished in 2002, and having been informed of the likely budgetary situation in the years to come, the CDPC agreed, subject to the availability of the necessary resources in 2003/2004, to include the following activities in its future work programme:

- revision of the European Prison Rules (to be carried out by the PC-CP – see paragraph 6 above and Appendix VI);
- consultation on the International Criminal Court (to be carried out by a Group of Experts (PC-S-ICC) – see paragraph 7 above and Appendix VII);
- developments in transnational criminal justice (to be examined by a Committee of Experts (PC-TJ) and Committee PC-OC – see paragraph 4 above and Appendices III and IV);
- police matters (to be carried out by an advisory body to the CDPC (PC-PM) – see paragraph 5 above and Appendix V);
- revision of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (to be carried out by a Committee of Experts – see paragraph 11 below).

11. Having examined the final activity report of its Reflection Group on the advisability of drawing up an Additional Protocol to the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (PC-S-ML), the CDPC invited Delegations to submit (by 1 October 2002) written observations on the issues addressed in the report and to indicate their priority with regard to the two options proposed for the review of the

Convention. It entrusted its Bureau with examining these observations and priority options and preparing draft terms of reference for a committee of experts, to be adopted by written procedure so as to enable the new committee to start work as soon as possible.

12. In the context of the discussion of the draft Additional Protocol to the Convention on Cybercrime (see paragraph 3 above), the CDPC instructed the Secretariat to follow developments – legal, practical and policy – concerning cybercrime, including the issues relating to the implementation of the Convention and its Additional Protocol, and to inform the CDPC regularly. It furthermore instructed the Secretariat to arrange for the collection and dissemination of examples of best practice in the prevention and control of cybercrime, including the offences covered by the Additional Protocol.

13. The CDPC examined the conclusions of the second and third Conferences of Prosecutors General of Europe (Bucharest, May 2001 and Ljubljana, May 2002) and took note of the decisions taken by the Committee of Ministers at the 762nd meeting of their Deputies on 5 September 2001 (item 10.1) as well as the Secretariat's proposals for future action which includes the establishment of the Conferences on a permanent basis. Recognising the importance of providing a permanent forum for prosecution services, the CDPC invited the Secretariat to revise its proposals in the light of the concerns expressed by several Delegations during the discussion and to transmit these revised proposals to Delegations with a view to a written consultation.

14. The CDPC took note of the "Review of the anti-money laundering systems in 22 Council of Europe member States (1998-2001)", which records the activities of the Select Committee of Experts on the Evaluation of Anti-Money-Laundering Measures (PC-R-EV) during the last four years. In this context, the CDPC reiterated its call for adequate financing and staffing of this Committee.

15. At the request of the Multidisciplinary Group on International Action against Terrorism (GMT), the CDPC adopted an opinion on the question of refusal of mutual assistance to countries applying the death penalty.

16. The CDPC took note of the fifth report (2000) on the situation of organised crime in member States, prepared by the Group PC-S-CO, and decided to authorise declassification of this document on 1 January 2003, provided no Delegation objects to publication before that date.

17. The CDPC was informed of the preparations for the 25th Conference of European Ministers of Justice, to be held in Sofia on 4-6 June 2003. Having noted the conference themes proposed by the inviting Bulgarian Minister ("International co-operation in the fight against international terrorism, and implementation of the relevant instruments of the Council of Europe" and "The response of the justice system to terrorism"), as well as the sub-theme proposed by the CDCJ for the civil law area ("Civil law remedies, including the freezing of assets and the compensation of victims"), the CDPC agreed, with a view to covering both the criminal and civil law aspects, to propose the following wording for the second theme: "The response of the system of justice – criminal and civil – to terrorism".

18. The CDPC took note of the resolutions adopted by the 24th Conference of European Ministers of Justice (Moscow, 4-5 October 2001) and of the conclusions of the Multilateral Conference on “European norms and standards: ethics of the police in ordinary and emergency situations” (Vilnius, 21-22 March 2002). It was informed about the preparation of the 13th Conference of Directors of Prison Administration (Strasbourg, November 2002), the 22nd Criminological Research Conference (Strasbourg, 2003), and the 26th Conference of European Ministers of Justice (Helsinki, June 2004).
19. The CDPC took note of the work of the Multidisciplinary Group on International Action against Terrorism (GMT) (see also paragraph 15 above).
20. The CDPC took note of the progress made in the establishment of the European Commission for the Efficiency of Justice (CEPEJ).
21. The CDPC took note of the co-operation activities for strengthening the Rule of Law as well as those carried out within the Stability Pact for South-Eastern Europe, in particular the anti-corruption initiative (SPAI) and the anti-organised crime initiative (SPOC).

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A P P E N D I X II

AGENDA

OPENING OF THE MEETING

- 1 Adoption of the agenda
- 2 Information provided by the Secretariat

STRUCTURES OF THE CDPC

- 3 Election of:
 - two members of the Bureau

ACTIVITIES OF THE CDPC

Committees

- 4 Crime in cyber-space – acts of a racist or xenophobic nature (PC-RX):
 - Draft Additional Protocol to the Convention on Cybercrime and Explanatory Report (final activity report)
- 5 Developments in international co-operation in criminal matters – “New Start” (PC-S-NS):
 - Final activity report
- 6 Advisability of drawing up an Additional Protocol to Convention ETS N° 141 (PC-S-ML):
 - Final activity report
- 7 Police matters (PC-PM):
 - Re-examination of terms of reference
- 8 Operation of European Conventions in the penal field (PC-OC):
 - Progress report (for information)
- 9 Criminological and criminal law aspects of organised crime (PC-S-CO):
 - Reports on the organised crime situation: declassification
 - Best practice surveys (for information)

Deleted: (for information)

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- 10 Council for Penological Co-operation (PC-CP):
 - Conditional release (parole): progress report (for information)
 - Revision of the European Prison Rules: re-examination of terms of reference
 - SPACE: progress report (for information)
 - Other items for information
- 11 Remand in custody and its implications for the management of penal institutions (PC-DP):
 - Progress report (for information)
- 12 Internal security services (PC-S-SEC):
 - Progress report (for information)
- 13 New ways of dealing with juvenile delinquency (PC-JU):
 - Progress report (for information)
 - Amendment to terms of reference: change in membership
- 14 Protection of children against sexual exploitation (PC-S-ES):
 - Progress report (for information)
- 15 Evaluation of anti-money laundering measures (PC-R-EV):
 - Progress report (for information)
- 16 Partnership in crime prevention (PC-PA):
 - Progress report (for information)
- 17 Management of long-term prisoners (PC-LT):
 - Progress report (for information)

Conferences and Colloquia

- 18 Second consultation meeting on the Statute of the International Criminal Court (Strasbourg, 2001): conclusions
- 19 24th Conference of European Ministers of Justice (Moscow, 2001): resolutions
- 20 25th Conference of European Ministers of Justice (Sofia, 2003): preparation
- 21 26th Conference of European Ministers of Justice (Helsinki, 2004): preparation
- 22 13th Conference of Directors of Prison Administration (Strasbourg, 2002): preparation
- 23 22nd Criminological Research Conference (Strasbourg, 2003): preparation
- 24 Conferences of Prosecutors General of Europe (Bucharest, 2001; Ljubljana, 2002): conclusions
- 25 Multilateral Conference on "European norms and standards: Ethics of the police in ordinary and emergency situations" (Vilnius, 2002): conclusions

Future work programme

26 New activities for 2003/2004

OPINIONS

27 Opinions on Assembly Recommendations

a) 1507 (2001) – fight against economic and transnational organised crime

b) 1523 (2001) – domestic slavery

c) 1531 (2001) – security and crime prevention in cities

d) 1543 (2001) – racism and xenophobia in cyberspace

e) 1545 (2002) – campaign against trafficking in women

28 Opinion to the GMT concerning refusal of assistance to countries applying the death penalty

29 ITEMS FOR INFORMATION

- Abolition of the death penalty
- Co-operation programmes for strengthening the Rule of Law
- “Octopus” and PACO programmes
- Group of States against Corruption (GRECO)
- European Conferences of Specialised Services against corruption
- Publications
- New developments in legislation, policy and administrative practice in member States in the field of crime problems
- Forum for Children and Families
- Pompidou Group
- Co-operation with the European Union
- Co-operation with United Nations
- Activities of international organisations (other than United Nations) in the field of crime problems
- Relations between the Council of Europe and OECD
- Co-operation with Financial Action Task Force (FATF) (cf. item 16)
- International Criminal Tribunal for the former Yugoslavia / International Criminal Court (cf. item 19)
- Stability Pact for South Eastern Europe: corruption and organised crime initiatives
- Consultative Council of European Judges (CCJE)
- Working Party on the implications of data protection for police and judicial co-operation in criminal matters (CJ-PD/GT-PJ)

OTHER SUBJECTS

30 Activities of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly

31 Activities of the Multidisciplinary Group on international action against terrorism (GMT)

Deleted: 30 . Abolition of the death penalty: exchange of information

32 European Commission for the Efficiency of Justice (CEPEJ)

33 Other business

34 Date of the next plenary session

A P P E N D I X I I I

SPECIFIC TERMS OF REFERENCE OF THE COMMITTEE OF EXPERTS ON TRANSNATIONAL CRIMINAL JUSTICE (PC-TJ)

DECISION CDPC/122/210602

1. Name of committee: Committee of Experts on Transnational Criminal Justice (PC-TJ)
2. Type of committee: Committee of Experts
3. Source of terms of reference: European Committee on Crime Problems (CDPC)
4. Terms of reference:

Taking into account the report submitted to the CDPC by the Reflection Group on developments in international co-operation in criminal matters (PC-S-NS) [document CDPC (2002) 1], the Committee is to:

- study the chapter "Renewal" of the above-mentioned report, with a view to making proposals for follow-up action, in particular on the questions concerning the rights and guarantees of the individual;
- report back to the CDPC.

5. Membership of the committee:

- a. States whose governments are entitled to appoint members: all member States.
- b. The Council of Europe will bear the travelling and subsistence expenses of one expert for each of the following [17] member States:
Austria, France, Georgia, Germany, Hungary, Ireland, Italy, Poland, Portugal, Romania, Russian Federation, Slovakia, Slovenia, Switzerland, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine.
- c. Desirable qualifications of persons serving on the Committee: experts on criminal law, criminal procedure, individual rights and guarantees and international co-operation in criminal matters.

- d. Two scientific experts to be appointed by the Secretary General.
The European Commission and the Secretariat General of the Council of the European Union may send representatives to the meetings of the Committee, without the right to vote or defrayal of expenses.
The Bureau of the CDPC may authorise the admission of observers to the Committee.

6. Structures and working methods:

The Committee may set up working parties.

7. Duration:

These terms of reference will expire on 31 May 2005.

A P P E N D I X I V

AD HOC TERMS OF REFERENCE FOR THE PC-OC

DECISION CDPC/123/210602

1. Name of Committee: Committee of Experts on the Operation of European Conventions in the Penal Field (PC-OC)
2. Type of Committee: Committee of Experts
3. Source of terms of reference: European Committee on Crime Problems (CDPC)
4. Terms of reference:

At its 51st plenary session, the CDPC examined the report submitted to it by the Reflection Group on developments in international co-operation in criminal matters (PC-S-NS) [document CDPC (2002) 1] and decided:

- a) to instruct the PC-OC to set up a Working Party for the purpose of
 - making proposals for follow-up action, excluding norm-setting activities, to the chapters "Visibility" and "Consistency" of that report;
 - preparing a feasibility study, including costs, for setting up and operating a data base as proposed in Chapter I.C of that report, taking due account of work presently being carried out in the European Union for similar purposes;
 - b) to instruct the PC-OC, bearing in mind that report and its own experience, to draft guidelines for a clear and coherent policy that the Committee of Ministers would be recommended to follow when examining requests from non-member States to accede to Council of Europe conventions in the penal field.
5. Duration: These terms of reference will expire on 31 May 2005.

A P P E N D I X V

REVISED SPECIFIC TERMS OF REFERENCE OF THE COUNCIL FOR POLICE MATTERS (PC-PM)

DECISION CDPC/120/031001 / CDPC/124/210602

1. Name of the Committee: Council for Police Matters (PC-PM)
2. Type of Committee: Advisory body
3. Source of terms of reference: European Committee on Crime Problems (CDPC)
4. Terms of reference:
 - to follow the development of European police systems (national and international);
 - to assist the CDPC in reviewing the implementation of Recommendation Rec(2001)10 on the European Code of Police Ethics and other relevant instruments of the Council of Europe;
 - to prepare, at the request of the Committee of Ministers or the CDPC, draft legal instruments and reports on police matters on the basis of ad hoc terms of reference;
 - to formulate opinions at the request of the CDPC;
 - to prepare conferences and high-level meetings on police matters;
 - to collect and disseminate documentation on police matters;
 - to promote research on police matters.
5. Membership:
 - a. Seven members elected in their personal capacity for three years by the CDPC (representatives of ministries responsible for the police, high-level representatives of national police administrations, scientific police researchers, high-level representatives of the judiciary involved in supervising the police, ombudsmen specialised in the police, etc).
 - b. Two scientific experts to assist the Council in carrying out its duties, to be appointed by the Secretary General.
 - c. The Council of Europe budget will bear the travel and subsistence expenses of the seven members and those of the two scientific experts.
 - d. The CDPC or its Bureau may authorise the admission of observers to the Council for Police Matters.
6. Duration:

The duration of these terms of reference is identical to that of the CDPC's terms of reference.

APPENDIX VI

AD HOC TERMS OF REFERENCE FOR THE COUNCIL FOR PENOLOGICAL COOPERATION (PC-CP) RELATING TO THE REVISION OF THE EUROPEAN PRISON RULES

DECISION CDPC/125/130202

1. Name of the Committee: Council for Penological Co-operation (PC-CP)
2. Source of the terms of reference: European Committee on Crime Problems (CDPC)
3. Date by which the terms of reference must be carried out: 31 December 2005
4. Terms of reference:

The European Prison Rules were originally introduced in Resolution (73) 5. They were based on the United Nations Standard Minimum Rules for the Treatment of Prisoners. They were subsequently revised and, in their present version, are contained in Recommendation N° R (87) 3. The Rules have thus long provided progressive standards to improve both the treatment of prisoners and the management of penal establishments. As the main normative instrument in the penitentiary field, the European Prison Rules fulfil a paramount reference function in the continuous development and reform of prison systems in Europe, particularly in the new member States.

Since their revision in 1987, developments in society, crime policy, sentencing practice, research and information technology, together with the accession of new member States to the Council of Europe, have significantly changed the context for prison management in Europe. These changed circumstances give rise to a number of questions that the existing Prison Rules do not address. Furthermore, the existing Rules need to be harmonised with the provisions of the more recent Recommendations of relevance in this field and should take account of the work undertaken by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT), of developments in the case-law of the European Convention on Human Rights as well as of the outcome of the work undertaken by the Steering Committee for Human Rights (CDDH) on a draft Protocol to the European Convention on Human Rights to secure certain additional rights to persons deprived of their liberty.

In updating the Prison Rules, attention should be paid to contemporary trends and changes in the philosophy and practice of prison treatment and management so as to promote the best of these developments. In doing so, account should be taken of general problems arising from new forms of criminality and specific problems encountered in new member States. A major aim should be to uphold the requirements of human rights and dignity of prisoners and lay down standards for humane and effective prison management that inter alia seeks to enable prisoners to lead a law-abiding life after release while ensuring the safety of prisoners, the prison staff and the community.

Among the issues to be addressed the following merit particular consideration:

- Remand in custody: ways and means of providing appropriate conditions of detention and safeguards against undue restrictions of their rights, bearing in mind the principle of presumption of innocence as enshrined in article 6.2 of the European Convention of Human Rights;
- The management of particular categories of prisoners such as young prisoners, the elderly, women, mothers with babies, cultural or ethnic minorities, foreigners, long-term prisoners and lifers, the mentally disturbed, vulnerable prisoners, violent, disruptive and/or socially dangerous prisoners, alcohol and drug misusing prisoners, HIV- positive prisoners, prisoners detained in connection with sex offences, domestic violence, organised crime and terrorist acts;
- Management problems concerning such matters as sentence planning, maximum security units, prison overcrowding, staff, medical and psychosocial services, privatised prisons, violence among inmates, riots and disturbances, the distinction between disciplinary and criminal offences and the procedures to be followed for either type of offence;
- Guaranteeing prisoners' fundamental rights including civil, political and social rights, as well as their rights in complaint and in disciplinary procedures;
- Research on and evaluation of effective methods of treatment, management and organisation.

With a view to ensuring congruence between the Prison Rules and more recent Recommendations, account should be taken of the following:

Rec. R (89) 12 on education in prison

Rec. R (92) 16 on the European Rules on community sanctions and measures

Rec. R (93) 6 concerning prison and criminological aspects of the control of transmissible diseases including aids and related health problems in prison

Rec. R (97) 12 on staff concerned with the implementation of sanctions and measures

Rec. R (98) 7 concerning the ethical and organisational aspects of health care in prison

Rec. R (99) 22 concerning prison overcrowding and prison population inflation

Rec. R (2000) 22 improving the implementation of the European rules on community sanctions and measures

Due account should also be taken of previous work of the Council for Penological Co-operation (PC-CP) on conditional release, of the work of the Committee of Experts on the management of life-sentenced and other long-term prisoners (PC-LT) as well as that of the Committee of Experts on pre-trial detention and its implications for the management of penal institutions (PC-DP).

Consideration should furthermore be given to the substantive sections of the General Reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT).

The work should lead to:

- a) a report identifying
 - significant problems and new possibilities for the management of prison systems;
 - the results of recent research bearing on the management of prisons and prisoners;
 - the need for provisions on matters not covered by the present Prison Rules;
 - examples of good contemporary prison practice and
- b) a draft Recommendation with explanatory memorandum updating the European Prison Rules.

In order to perform this task, the PC-CP would need to consult, as and when appropriate, the European Committee for the Prevention of Torture and Inhuman or degrading treatment (CPT), the Steering Committee for Human Rights (CDDH) and the Committee of Experts on pre-trial detention and its implications for the management of penal institutions (PC-DP). It would also need the assistance of three scientific experts and ad hoc consultants with specific knowledge of relevant legislation and legal practice, of international norms and conventions and in particular the European Convention on Human Rights and its case law, of recent developments in research and practice in penitentiary issues and of the main problems encountered in the reform of the prison systems in member States.

The PC-CP should keep the European Committee on Crime Problems (CDPC) regularly informed about the progress of its work.

APPENDIX VII

SPECIFIC TERMS OF REFERENCE OF THE GROUP OF EXPERTS FOR CONSULTATION ON THE INTERNATIONAL CRIMINAL COURT (PC-S-ICC)

DECISION CDPC/126/210602

1. Name of Committee: Group of Experts for Consultation on the International Criminal Court (PC-S-ICC)

2. Type of Committee: Committee of Experts

3. Source of terms of reference: European Committee on Crime Problems (CDPC)

4. Terms of reference:

Taking into account:

- the entry into force on 1 July 2002 of the Rome Statute of the International Criminal Court (ICC) ;

- the Declarations adopted by the Committee of Ministers on 10 October 2001 and 18 April 2002;

- the Conclusions adopted at the two consultation meetings on the implications for Council of Europe member states of the ratification of the Rome Statute of the International Criminal Court (held on 16-17 May 2000 and 13-14 September 2001);

- Recommendation 1189 (1992) and Recommendation 1408 (1999) adopted by the Parliamentary Assembly;

- Resolution N° 1 adopted by the European Ministers of Justice at their 24th Conference (Moscow, 4-5 October 2001);

- the Venice Commission report on constitutional issues raised by the ratification of the Rome Statute of the International Criminal Court (Venice, 15-16 December 2000);

- the consultations held within the framework of the Council of Europe prior to the establishment of the International Criminal Tribunal for the former Yugoslavia;

- the work of other international institutions active in this field (e.g. United Nations, European Union, INTERPOL, International Committee of the Red Cross) and the benefit of co-ordinating regional support for the ICC with sub-regional and global efforts;

the Group of Experts is to:

follow up in the legal field the Declarations adopted by the Committee of Ministers on 10 October 2001 and 18 April 2002 and contained in the Appendix to these terms of reference;

- ensure a coherent approach towards support for the ICC by taking due account of the activities of bodies working within the Council of Europe, such as the Committee of Legal Advisers on Public International Law (CAHDI) and the Committee of Experts on the Operation of European Conventions in the Penal Field (PC-OC), and within other international fora, and by working in close co-operation with them;

- exchange information on steps taken or planned at the national level relating to ratification and implementation of the Rome Statute;

- prepare a report to the Committee of Ministers on the action which the Council of Europe could usefully carry out in support of the ICC, taking account of the work carried out in other international bodies (in particular the United Nations) and within the European Union;

5. Membership:

- a. States whose governments are entitled to appoint members: all member States
- b. Number of members whose travelling and subsistence expenses are borne by the Council of Europe budget: one expert per member State
- c. Desirable qualifications of persons serving on the Committee: experts dealing with issues relating to the ICC and responsible for national implementing legislation
- d. Two scientific experts to be appointed by the Secretary General
- e. One representative each of the Committee of Legal Advisers on International Law (CAHDI) and the Committee of Experts on the Operation of European Conventions in the Penal Field (PC-OC).

6. Observers:

- a. Observer States to the Council of Europe and applicant States for Council of Europe membership.
- b. The following international organisations and bodies: United Nations.

7. Other participants:

The European Commission and the Secretariat General of the Council of the European Union.

8. Working methods:

The Group will meet once yearly or whenever the CDPC or its Bureau deems it necessary. It will carry out its work under the auspices of the European Committee on Crime Problems (CDPC). It may set up working parties. All public documents produced by the PC-S-ICC will be disseminated via the Council of Europe's ICC website; restricted documents will be distributed to the network of country liaison officers on the ICC.

9. Duration of terms of reference:

These terms of reference shall be reviewed before 31 December 2003.

Appendix to the draft terms of reference of the PC-S-ICC

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

DECLARATION

of the Committee of Ministers
on the International Criminal Court - forthcoming entry into force of the Rome Statute

*(Adopted by the Committee of Ministers on 18 April 2002,
at the 793rd meeting of the Ministers' Deputies)*

The Committee of Ministers warmly welcomes the forthcoming entry into force, on 1 July 2002, of the Rome Statute, setting up the International Criminal Court, following the 60th ratification of the Statute on 11 April 2002, which should be a vital step towards ending the culture of impunity for the most serious crimes of concern to the international community as a whole.

Recalling its Declaration on the International Criminal Court, adopted on 10 October 2001, under the Liechtenstein Chairmanship, it reiterates its conviction that the Court is a fundamental factor for reconciliation, justice, peace and security, and that it will contribute to the strengthening of the rule of law and the international protection of and respect for human rights and international humanitarian law. The Court will also serve as a strong deterrent for potential perpetrators of war crimes, genocide and crimes against humanity.

The Council of Europe has played an important role in facilitating the entry into force of the Rome Statute in view of its competences and of the number of its members having ratified the Statute (30 to date).

The Committee of Ministers again calls on member, applicant and observer States to become Parties to the Statute and to enact without delay the necessary national implementing legislation in order to enable them to cooperate fully with the future International Criminal Court and to conduct domestic investigations and prosecutions of persons suspected of having committed a crime provided in the Rome Statute. The Council of Europe continues to be ready to provide States which so request, in the framework of existing legal cooperation programmes, with the appropriate assistance with a view to becoming Party to and implementing the Rome Statute.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

DECLARATION
on the International Criminal Court

*(Adopted by the Committee of Ministers
on 10 October 2001,
at the 768th meeting of the Ministers' Deputies)*

The Committee of Ministers of the Council of Europe,

Bearing in mind in particular:

- The Declaration of the Committee of Ministers of the Council of Europe of 10 December 1998 on the occasion of the 50th anniversary of the Universal Declaration of Human Rights;
 - Recommendation 1408 (1999) of the Parliamentary Assembly on the International Criminal Court and the corresponding reply by the Committee of Ministers;
 - the report by the Venice Commission on constitutional issues raised by the ratification of the Rome Statute on the International Criminal Court dated 15 January 2001;
 - the conclusions adopted at the first (CM/Inf(2002)32) and second consultation meetings (CM/Inf(2001)33), organised by the Council of Europe on 16-17 May 2000 and 13-14 September 2001, on the implications for Council of Europe member states of the ratification of the Rome Statute of the International Criminal Court;
 - the Common Position of the Council of the European Union of 11 June 2001 on the International Criminal Court,
1. Convinced of the importance of putting an end to impunity for the perpetrators of the most serious crimes of concern to the international community as a whole and thus to contribute to the prevention of such crimes;
 2. Convinced that the establishment of the International Criminal Court is a fundamental factor for reconciliation, justice, peace and security, and that it will contribute to the strengthening of the rule of law, the international protection of and respect for human rights and international humanitarian law;
 3. Strongly attached to the standards of the European Convention on Human Rights and Fundamental Freedoms;

4. Recalling that the Rome Statute of the International Criminal Court is based on very high standards of justice and that the Court is complementary to national criminal jurisdictions;
5. Aware of the important role that the Council of Europe can play in facilitating the entry into force of the Rome Statute in view of its competences and of the number of its members, and of the complementarity of efforts between the Council of Europe and the European Union;
6. Welcoming the initiative of the Liechtenstein Chairmanship of the Committee of Ministers in convening the second consultation meeting and encouraging further activities which pursue the same aim;
7. Welcoming the contribution that the establishment of the International Criminal Court represents for the development of international criminal justice;
8. Welcoming the large number of signatures of the Rome Statute and the increasing number of ratifications,
 - I. CALLS ON all member, applicant and observer States who have not yet done so to become as soon as possible parties to the Rome Statute;
 - II. CALLS UPON all States to facilitate the early establishment of the International Criminal Court, to do everything possible to ensure efficient co-operation with the Court and to guarantee the independent, impartial and effective administration of justice;
 - III. ENCOURAGES all member, applicant and observer States to continue to support the work of the Preparatory Commission for the International Criminal Court and to co-operate fully with existing international criminal tribunals;
 - IV. CALLS ON all member, applicant and observer States to adapt without delay their internal law in accordance with the Rome Statute in order to enable them to co-operate fully with the future International Criminal Court and to make possible domestic investigations and prosecutions of persons suspected of having committed a crime provided in the Statute of the International Criminal Court,
 - V. EXPRESSES its readiness to provide States which so request, in the framework of existing legal co-operation programmes, with the appropriate assistance with a view to the ratification and implementation of the Rome Statute;
 - VI. STRESSES its readiness to consider further appropriate steps to ensure that, in the process of elaboration and implementation of Council of Europe instruments relevant to international co-operation in the criminal field, full account is taken of the principles and provisions of the Rome Statute of the International Criminal Court.

APPENDIX VIII

OPINION

ON ASSEMBLY RECOMMENDATION 1507 (2001): EUROPE'S FIGHT AGAINST ECONOMIC AND TRANSNATIONAL ORGANISED CRIME: PROGRESS OR RETREAT?

At the 752nd meeting of their Deputies on 16 May 2001 (Decision N° CM/784/16052001), the Committee of Ministers assigned ad hoc terms of reference to the CDPC, instructing it to give, by 31 December 2001 (extended to 30 June 2002) an opinion on Assembly Recommendation 1507 (2001) on "Europe's fight against economic and transnational crime: progress or retreat?"¹, adopted on 24 April 2001.

At its 51st plenary session from 17 to 21 June 2002, the CDPC examined this Recommendation and adopted the following

Opinion

1. General observations

Assembly Recommendation 1507 draws an alarming but – sadly – realistic picture of the situation of economic and transnational organised crime in Europe which, as is pointed out by the Assembly, may pose a risk for economic and political stability. However, the Assembly also recognises that a certain number of useful initiatives had already been taken by the Council of Europe and in other international fora to prevent and control parts of this phenomenon and indicated potential avenues for further progress.

In general, the CDPC agrees with the Assembly's observations and suggests that the Assembly keeps this area under periodic review.

In addition, the CDPC would like to bring the following observations in respect of individual recommendations to the Assembly's attention.

2. Comments on individual recommendations

Concerning point i of paragraph 10

The CDPC would like to recall that there are already several Council of Europe treaties which aim at enhancing international co-operation with regard to tax matters. In the area of judicial co-operation, the first Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS N° 99) has been ratified by 35 States, whereas the Convention on Mutual Administrative Assistance in Tax Matters (ETS N° 127) has been ratified by 9 States. Although these treaties do not criminalise tax fraud, the CDPC considers that they provide a sufficient legal basis for Europe-wide legal co-operation.

¹ The Recommendation appears in the appendix to the present opinion.

Concerning point ii of paragraph 10

The CDPC notes that Recommendation (2001) 11 concerning guiding principles on the fight against organised crime was adopted by the Committee of Ministers on 19 September 2001 at the 765th meeting of the Ministers' Deputies.

Concerning point iii of paragraph 10

The draft Recommendation on common rules against corruption in the funding of political parties and election campaigns has been finalised by the GMC in October 2001 and submitted to the Ministers' Deputies in May 2002 for adoption. As several member States have raised objections, it has been referred to the Rapporteur Group on Legal Co-operation (GR-J) for further consideration. The CDPC hopes that the draft recommendation, which reflects a fragile balance between various national solutions, will be adopted soon.

Concerning point iv of paragraph 10

At its last plenary session in June 2001, the CDPC set up a reflection group (PC-S-ML) to discuss the advisability of drawing up an additional protocol to the 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS N° 141). The group submitted its conclusions to the CDPC at its 51st plenary session in June 2002. The CDPC decided to allow member States more time to study further the conclusions prepared by the PC-S-ML and to resume consideration of the proposals contained therein as soon as possible, following a written consultation of all Delegations.

Concerning point v of paragraph 10

The CDPC cannot but endorse the Assembly's call for adequate resources for Committee PC-R-EV. It welcomes that for the year 2002 Committee PC-R-EV has been provided with supplementary – although still insufficient - budgetary resources. More attention needs also to be given to the Committee's permanent staff requirements. In this respect, the CDPC recalls the high-level commitments made by the Council of Europe to properly fund and staff the PC-R-EV.

Concerning point vi of paragraph 10

The CDPC notes with satisfaction that the Criminal Law Convention on Corruption (ETS N° 173) has now been ratified by 16 States and signed by 26 others. It will enter into force on 1 July 2002 and thus be subject to monitoring by GRECO. The CDPC hopes that the other signatory States will ratify the Convention as soon as possible.

The Civil Law Convention on Corruption (ETS N° 174) has now been ratified by 7 States and signed by 25 others. As 14 ratifications are required for its entry into force, the CDPC hopes that the signatory States will ratify the Convention as soon as possible.

Concerning point vii of paragraph 10

The CDPC notes with satisfaction that GRECO has now been joined by 34 States, which is a substantial increase in its membership, compared with the situation prevailing at the time when the Assembly adopted its Recommendation. The CDPC encourages those Council of Europe members States which have not done so to become members of GRECO. Equally, non-member States entitled to join GRECO should consider becoming members.

Concerning point viii of paragraph 10

The CDPC notes with regret that none of the two conventions referred to by the Assembly concerning environmental liability has so far been ratified by enough States to enter into force. The Convention on civil liability for damage resulting from activities dangerous to the environment (ETS N° 150) has been signed by 9 States, but was ratified by none. The Convention on the protection of the environment through criminal law (ETS N° 172) has been signed by 12 States and ratified by one. The CDPC considers that these conventions deserve member States' attention and invites them to examine the possibility of their ratification.

Concerning point ix of paragraph 10

The CDPC observes that, although the resources of the Octopus project have not been reinforced, it continues to provide useful assistance to central and eastern European States. Other programmes, co-sponsored by the Council of Europe, such as SPAI and SPOC, have successfully attracted further funding.

Concerning point x of paragraph 10

The CDPC notes with satisfaction that the text of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS N° 182) has been adopted by the Committee of Ministers on 11 November 2001. The Protocol has so far been signed by 19 States.

The CDPC welcomes the Assembly's suggestion to draw up a special convention on the cross-border application of modern investigative techniques, but considers that at this stage it is premature to start drafting such a text, for two reasons: 1) it has first to be seen how the first protocol to the European Union Mutual Assistance Convention will be implemented in practice; 2) the above-mentioned second protocol (ETS N° 182) already offers, within the context of the Council of Europe, a certain number of cross-border powers, which member States can implement by ratifying the protocol.

Concerning point xi of paragraph 10

The CDPC remarks that under Article 13² of the OECD Convention on Combating Bribery of Foreign Public Officials in Combating Bribery in International Business Transactions, those member States of the Council of Europe which are not members of the OECD need first to become full participants in the Working Group on Bribery in International Business Transactions before being entitled to ratify the Convention.

Concerning point xii of paragraph 10

Please refer to the general observations.

² “1. Until its entry into force, this Convention shall be open for signature by OECD members and by non-members which have been invited to become full participants in its Working Group on Bribery in International Business Transactions.

2. Subsequent to its entry into force, this Convention shall be open to accession by any non-signatory which is a member of the OECD or has become a full participant in the Working Group on Bribery in International Business Transactions or any successor to its functions. For each such non-signatory, the Convention shall enter into force on the sixtieth day following the date of deposit of its instrument of accession.”

APPENDIX

Recommendation 1507 (2001)³

Europe's fight against economic and transnational organised crime: progress or retreat?

1. The Assembly, recalling its Resolution 1147 (1998) on the threat to Europe from economic crime and its Order No. 540 (1998) authorising it to "review regularly the Council of Europe's work towards combating economic crime", considers that the situation described in that resolution which was already critical at the time, has since worsened even further. European democracy, the rule of law and the economic and political stability of Europe now hang in the balance.
2. Economic crime in its multiple forms has become even more international, complex in structure and operations, technologically sophisticated, wealthy, economically powerful and is now capable of infiltrating democratic institutions. The day when all this translates into political influence, Europe's political capability and its will to fight it may well wane and the battle be lost.
3. The Council of Europe, built on and uniting Europe around the lofty principles mentioned above, has a central role to play in this struggle, in close co-operation with other international institutions such as the Organisation for Economic Co-operation and Development (OECD), the World Bank, the European Union, the European Bank for Reconstruction and Development, the United Nations, Europol, Eurojust and others. The Committee of Ministers of the Council of Europe has to lead Europe even more forcefully than in the past, assisted ever more resolutely by the Assembly.
4. The Assembly welcomes the signing, in Palermo in December 2000, by 124 countries – of which forty-one are Council of Europe member states – of the United Nations Convention against Transnational Organised Crime, and accompanying protocols. It calls on all Council of Europe member states to ratify these texts as soon as possible. The Assembly also welcomes the inclusion in this convention of a provision prohibiting the refusal of a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters. This provision takes fully into account the interpretation of Recommendation 15, adopted by the Financial Action Task Force on Money Laundering (FATF, July 1999)).
5. Concerted action at Council of Europe level is equally necessary to fight more efficiently the many expressions of economic crime. These include:
 - i. *the abhorrent trafficking in human beings* for the purposes of illegal immigration, exploitative labour, begging, sexual exploitation, or for assistance in criminal activities such as the illegal transport of arms, drugs and migrants;

³ *Assembly debate* on 24 April 2001 (11th Sitting) (see [Doc. 9018](#), report of the Committee on Economic Affairs and Development, rapporteur: Mrs Squarzialupi).
Text adopted by the Assembly on 24 April 2001 (11th Sitting).

ii. *corruption, bribery and influence trading*: the Assembly recalls its Resolution 1214 (2000) on the role of parliaments in fighting corruption and its hosting, in May 2000, of a Conference of Speakers and Presidents of European Parliamentary Assemblies devoted to this subject. The Assembly in this context refers to work under way in the Council of Europe, and the Assembly itself, on the financing of political parties. It welcomes the Council of Europe's conclusion, in 1999, of its Criminal Law Convention on Corruption (ETS No. 173) and its Civil Law Convention on Corruption (ETS No. 174) and notes with satisfaction that the former has already been signed by 39 states and ratified by 9, whereas 27 states have signed and 3 ratified the latter. The Assembly hopes that both conventions can enter into force by 2002. Moreover, it supports regional anti-corruption and anti-organised crime initiatives, such as those undertaken under the Stability Pact for South Eastern Europe (SPAI and SPOC);

iii. *money laundering*, the scale of which may undermine the integrity of national economies and democratic systems. Action against money laundering is of particular importance as it can rob the perpetrators of economic crime of their ill-gotten gains and hence strike at its very foundation. The Assembly welcomes the strengthening of the activities of the FATF while stressing the importance of transparency and a non-discriminatory approach to the enhancement of international co-operation in the fight against money laundering. It reiterates its call on Council of Europe member states that are not formally members of the FATF, made in Resolution 1147 (1998), to participate actively in the most effective FATF-style regional group, the Council of Europe's Committee of Experts on the Evaluation of Anti-Money Laundering Measures (PC-R-EV);

iv. *the production and spread of illicit drugs*, which are having devastating consequences for both Europe's young people and the continent's future. The Parliamentary Assembly should organise, with ministerial and expert contributions, a stocktaking conference to evaluate measures taken to combat drug trafficking in the Council of Europe geographic area;

v. *the smuggling of contraband items*, especially arms, art objects, alcoholic beverages and cigarettes, with the latter believed to account to for up to 15% of total consumption in some Council of Europe member states;

vi. *counterfeit products*, the manufacture of which is greatly aided by modern technology and which infringes on intellectual property rights, causes economic damage, distorts markets and may cause serious harm to consumers;

vii. *environmental crime*, which may inflict irreparable damage on the ecosystem and ultimately human health, as pollution knows no national borders;

viii. *cybercrime*, which through illicit intrusion into and manipulation of computer networks or databanks, not only causes damage in its own right but also significantly amplifies the effects of theft and fraud. Council of Europe member states and other countries need to agree on common legal principles and sanctions, as well as to engage in co-operation on information sharing and other forms of mutual assistance, while ensuring respect for individual rights, especially privacy. The Assembly in this context supports the Council of

Europe's forthcoming convention on cybercrime, which it hopes will become a landmark instrument in Europe and beyond;

ix. *tax evasion*, pursued on a large scale and linked to economic crime, continues to hamper the economic resources of many countries in Europe. Tax havens are not only attractive to launderers and fraudsters because of their favourable fiscal system but also because international legal assistance is systematically denied on the ground of fiscal exception. The Assembly therefore welcomes the EU agreement in 2000 to combat tax evasion on interest income.

6. The Assembly recognises that countries in transition in central and eastern Europe encounter special difficulties in tackling economic crime. The Assembly reiterates its support for the Council of Europe Octopus project designed to help these countries in their struggle against it.

7. The Assembly believes that it is urgent that Council of Europe member states agree on common principles by which state institutions can repel pressure from economic crime, especially since Europe is growing ever closer, through the European Union's Economic and Monetary Union, expanding European Community legislation and the EU's forthcoming enlargement. It supports the important work of the European Union in the fight against economic crime and corruption. This includes the 1991 Directive on Money Laundering, its 1995 Convention on the Protection of Financial Interests of the Community and protocols, and its 1997 Convention on the Fight Against Corruption.

8. The Assembly notes with alarm that despite efforts undertaken by various international organisations – including the Council of Europe, the OECD and the European Union – cross-border police and judicial co-operation on cases of economic crime still meet with great difficulties, particularly when they involve the use of modern investigative techniques or the disclosure of sensitive information. It therefore welcomes the recent adoption by the Council of Europe's Committee of Ministers of a framework global action plan for judges in Europe.

9. The Assembly welcomes the entry into force in 1999 of the OECD Convention on Combating Bribery of Foreign Public Officials, which is open also to countries not members of the OECD, but notes that only twenty-two of the Council of Europe's forty-three member states have so far ratified it.

10. In conclusion, the Assembly calls upon the Committee of Ministers:

i. to mandate the European Committee on Crime Problems (CDPC) to draw up a Council of Europe instrument to combat tax evasion similar to that of the European Union, thus ensuring the application of EU principles to all member states of the Council of Europe and providing an additional means of combating economic crime;

- ii. to adopt in 2001 draft guiding principles in the fight against organised crime based on the work of the Directorate General for Legal Affairs, and thereby to provide a common framework for action by member states in this area;
- iii. to finalise the draft recommendation, under elaboration by the Multidisciplinary Group on Corruption (GMC), on guidelines against corruption in the funding of political parties and electoral campaigns, and in this way protect political parties, the cornerstones of democracy, against undue influence;
- iv. to update the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141) in order to render it capable of responding to the changing features of money laundering. This implies the revision of the convention by supplementing it with additional protocols;
- v. to grant the Committee of Experts on the Evaluation of Anti-Money Laundering Measures (PC-R-EV) adequate resources, both in staff and funding, through appropriate budgetary formulas in order to enable it successfully to conduct a second round of anti-laundering reviews;
- vi. to ensure speedy ratification of the Council of Europe Criminal Law Convention on Corruption (ETS No. 173) and its Civil Law Convention on Corruption (ETS No. 174) by all Council of Europe member states;
- vii. to intensify co-operation within the Council's Group of States Against Corruption (Greco), notably by ensuring the latter's expansion in membership from the present twenty-eight to all Council of Europe member states;
- viii. to encourage the signature by the Council of Europe member states of the Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment (ETS No. 150) and of the Convention on the Protection of the Environment through Criminal Law (ETS No. 172);
- ix. to support the Octopus project aiming to fight economic crime in central and eastern Europe, through a strengthening of its resources;
- x. to speed up the work on updating and supplementing the 1959 European Convention on Mutual Assistance in Criminal Matters (ETS No. 30) through a second additional protocol, and to envisage the drawing up of a special convention on the cross-border application of modern investigative techniques, also covering witness protection;
- xi. to work in favour of ratification by all Council of Europe member states of the OECD's Convention on Combating Bribery of Foreign Public Officials;
- xii. to report to it on progress made in Council of Europe member states or by the Organisation as regards various provisions of its Resolution 1147 (1998) on the threat to Europe from economic crime.

The Assembly invites member states:

- i. to adopt specific legislation to outlaw any acts related to trafficking in human beings;
- ii. to establish penalties that correspond to the seriousness of the offence;
- iii. to provide for the seizure and confiscation of profits made by traffickers;
- iv. to allocate resources raised in this way to protection programmes for victims of trafficking in human beings;
- v. to ensure co-ordination between member states at the stage of pre-trial investigations in prosecutions for trafficking and as regards extradition by states of their nationals who are being prosecuted for involvement in such trafficking.

A P P E N D I X I X

OPINION ON ASSEMBLY RECOMMENDATION 1523 (2001): DOMESTIC SLAVERY

By Decision No. CM/799/05092001, the Committee of Ministers invited the CDPC to give an opinion, by 31 March 2002 (extended to 30 June 2002), on Parliamentary Assembly Recommendation 1523 (2001) on domestic slavery⁴.

The CDPC examined the Assembly Recommendation at its 51st plenary session (17-21 June 2002) and adopted the following

Opinion

1. The CDPC welcomes the Recommendation and shares the Assembly's concern. The phenomenon of slavery has a number of crime-related aspects. It will only be effectively countered with a multidisciplinary approach to the problem, including a socio-economic and gender perspective, capable of tackling the complexity of the problem, which can entail related abuse, such as torture, physical or psychological cruelty, rape, sexual aggression, or deprivation of medical care and food. It can also entail related crime such as corruption, money-laundering and organised crime. It raises issues requiring co-operation between States in criminal matters.
2. Ultimately, any kind of slavery, "ownership" or control of one person by another, is a serious abuse of fundamental rights and freedoms and therefore deserves an appropriate crime policy response. It is interesting to note that the slave trade and later slavery as such were the subject of the first international treaties motivated by a desire to protect individuals, as opposed to State interests. Furthermore, in a recent codification of international criminal law, the Rome Statute of the International Criminal Court lists 'enslavement' as a crime against humanity (in Article 7). Enslavement is defined as the 'exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children'. Under the Rome Statute, crimes against humanity entail the commission of the listed acts as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. Although domestic slavery is a wider problem which would not usually satisfy the contextual requirements of crimes against humanity, the definition of enslavement is nevertheless useful as an international reference.
3. As is apparent in the above definition of enslavement, a link often exists between slavery and trafficking in human beings. By virtue of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention against Trans-national Organized Crime (Palermo, 2000), an acceptable

⁴ The Recommendation appears in the appendix to the present opinion.

international definition of trafficking in human beings does exist and measures to be taken at the national level have been agreed upon. According to Article 5 of the UN Trafficking Protocol, an obligation of States Parties exists to establish as criminal offences the actions set out in Article 3 of the Protocol, i.e. trafficking in human beings for the purpose, in particular, of exploitation, including forced labour or slavery.

4. The CDPC finds the definition contained in article 3 of the UN Protocol satisfactory and, in line with paragraph 10 (v) of the Assembly's Recommendation, would encourage its implementation in the national legislation of Council of Europe member States.

5. At the national level, mechanisms should be put in place to enable domestic slavery to be investigated, uncovered, prosecuted and punished. Thus every step of combating domestic slavery needs to be facilitated. In particular, at every stage of the justice process, these measures will have to include awareness-raising among justice operators.

6. Criminalisation: A harmonised approach towards this issue in the criminal laws of member States is likely to be beneficial for the prevention and repression of this phenomenon, at least where it is linked to trafficking in human beings. In this respect, the CDPC would like to point out that a number of Council of Europe Recommendations are devoted to relevant issues such as sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults (Recommendation R (91) 11) and action against trafficking in human beings for the purpose of sexual exploitation (Rec. R (2000) 11). Discussions are also under way, within the CDEG, concerning the feasibility of drafting a Council of Europe convention on trafficking in human beings.

7. Investigation and enforcement: In terms of crime detection, it is certain that measures need to be in place to counter the practical obstacles arising from the situation of reclusion and consequent silencing of victims. In this respect, measures similar to those recommended in Recommendation R (85) 4 on violence in the family, which looks *inter alia* at the limiting of personal freedom within the household, could apply *mutatis mutandis* also to the problem of detection of domestic slavery.

8. The CDPC welcomes paragraph 10 (iii) of the Assembly's Recommendation, according to which police should receive adequate training to equip them with the necessary skills to deal with the complexity of domestic slavery. In particular, awareness should be fostered among the police forces. This concern should also form part of a broader policy to achieve some gender balance within the police forces, as recommended in the European Code of Police Ethics (Recommendation Rec(2001)10), which, in paragraph 25, refers to a recruitment policy "with the overall objective of making police personnel reflect the society they serve". The Code, in paragraph 49, also calls for police investigations to "be sensitive and adaptable to the special needs of persons, such as children, juveniles, women, minorities including ethnic minorities and vulnerable persons."

9. Diplomatic immunity as an obstacle to investigation: The CDPC would like to make the following observations with regard to paragraph 10 (iv) of the Assembly's Recommendation: although Council of Europe member States are not in a position to amend unilaterally the Vienna Convention as recommended in paragraph 10 (iv), they are in a position to waive the immunity of their diplomatic staff with respect to such acts as domestic slavery. Immunity from criminal jurisdiction, inviolability of private residence, papers, correspondence and property as well as immunity from arrest and detention will mean that, in case of criminal activity by the diplomatic agent, the host State may notify the sending State that he or she is *persona non grata*. As provided under the Convention, the person may then be recalled, or the receiving State could refuse to recognise the person.

10. Protection of victims: Over the past decades the CDPC has prepared Recommendations concerning victims, which are relevant also in the context of domestic slavery: Recommendation R (85) 11 on the victim's position in the framework of criminal law and procedure; R (87) 21 on assistance to victims and the prevention of victimisation; and R (97) 13 concerning intimidation of witnesses and the rights of the defence;

APPENDIX

Recommendation 1523 (2001)⁵: Domestic slavery

1. In the last few years a new form of slavery has appeared in Europe, namely domestic slavery. It has been established that over 4 million women are sold each year in the world.
2. In this connection the Assembly recalls and reaffirms Article 4, paragraph 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which prohibits slavery and servitude, and also the definition of slavery derived from the opinions and judgments of the European Commission of Human Rights and the European Court of Human Rights.
3. The Assembly also recalls Article 3 of the ECHR, which provides that no one shall be subjected to torture or to inhuman or degrading treatment or punishment, and Article 6, which proclaims the right of access to a court in civil and criminal matters, including cases where the employer enjoys immunity from jurisdiction.
4. The Assembly also refers to the European Convention on Mutual Assistance in Criminal Matters (1959) (ETS No. 30), the European Convention on Extradition (1957) (ETS No. 24) and the European Agreement on “au pair” Placement (1969) (ETS No. 68).
5. It notes that the victims’ passports are systematically confiscated, leaving them in a situation of total vulnerability with regard to their employers, and sometimes in a situation bordering on imprisonment, where they are subjected to physical and/or sexual violence.
6. Most of the victims of this new form of slavery are in an illegal situation, having been recruited by agencies and having borrowed money to pay for their journey.
7. The physical and emotional isolation in which the victims find themselves, coupled with fear of the outside world, causes psychological problems which persist after their release and leave them completely disoriented.
8. The Assembly also deplores the fact that a considerable number of victims work in embassies or in the homes of international civil servants who, under the Vienna Convention on Diplomatic Relations of 1961, enjoy immunity from jurisdiction and enforcement and are covered by the principle of inviolability of persons and property.

⁵ *Assembly debate* on 26 June 2001 (18th Sitting) (see Doc. 9102, report of the Committee on Equal Opportunities for Women and Men, rapporteur: Mr Connor; and Doc. 9136, opinion of the Social, Health and Family Affairs Committee, rapporteur: Mrs Belohorská).
Text adopted by the Assembly on 26 June 2001 (18th Sitting).

9. It regrets that none of the Council of Europe member states expressly make domestic slavery an offence in their criminal codes.

10. It accordingly recommends that the Committee of Ministers ask the governments of member states to:

- i. make slavery and trafficking in human beings, and also forced marriage, offences in their criminal codes;
- ii. strengthen border controls and harmonise policies for police co-operation, especially with respect to minors;
- iii. ensure that police officers are adequately trained to deal with victims of slavery and increase the number of women officers;
- iv. amend the Vienna Convention in order to waive diplomatic immunity for all offences committed in private life;
- v. sign and ratify the Convention against Transnational Organised Crime and its additional protocols (December 2000);
- vi. protect the rights of victims of domestic slavery by:
 - a. generalising the issuing of temporary and renewable residence permits on humanitarian grounds;
 - b. taking steps to provide them with protection and with social, administrative and legal assistance;
 - c. taking steps for their rehabilitation and their reintegration, including the creation of centres to assist, among others, victims of domestic slavery;
 - d. developing specific programmes for their protection;
 - e. increasing victims' time limits for bringing proceedings for offences of slavery;
 - f. establishing compensation funds for the victims of slavery;
- vii. give accurate information about the risks of working abroad to domestic workers and others when permits are requested, for instance at embassies;
- viii. avoid all gender discrimination in the issuing of work permits to domestic workers.

11. The Assembly also recommends that the Committee of Ministers ask the relevant expert committee(s) to draw up a domestic workers' charter of rights.

APPENDIX X

OPINION

ON ASSEMBLY RECOMMENDATION 1531 (2001) ON SECURITY AND CRIME PREVENTION IN CITIES: SETTING UP A EUROPEAN OBSERVATORY

At the 768th meeting of their Deputies on 10 October 2001 (Decision N° CM/802/10102001), the Committee of Ministers assigned ad hoc terms of reference to the CDPC, instructing it to give, by 31 May 2002 (extended to 30 June 2002 at the 781st meeting – item 10.7), an opinion on Assembly Recommendation 1531 (2001) on “security and crime prevention in cities: setting up a European observatory”⁶, adopted on 24 September 2001.

At its 51st plenary session from 17 to 21 June 2002, the CDPC examined this Recommendation and adopted the following

Opinion

1. General observations

Assembly Recommendation 1531 in general addresses the question of security and crime prevention and more specifically the need to promote concerted actions at all levels – local, national and European - and stresses the importance of involving municipal authorities in the implementation of security policies, which may imply increasing their powers and responsibilities in the matter. The CDPC cannot but support these observations.

The CDPC, either directly or through its subordinate bodies, constantly follows developments in crime prevention policies. In the course of the past years it prepared for adoption by the Committee of Ministers the following Recommendations:

- R (83) 7 on participation of the public in crime policy;
- R (87) 19 on the organisation of crime prevention;
- R (96) 8 on crime policy in Europe in a time of change

2. Comments on individual recommendations

a) Concerning point i of paragraph 17

One of the CDPC’s subordinate committees, the Committee of Experts on partnership in crime prevention (PC-PA), is presently drafting a Recommendation containing guidelines on the best use of the partnership approach in crime prevention at all levels – local, national and European - which will be accompanied by a compendium of best practices in several member states. In accordance with its specific terms of reference, the PC-PA Committee is

⁶ The Recommendation appears in the appendix to the present opinion.

examining which key agencies and partners are likely to deliver the most effective results in preventing crime and the fear of crime. In particular, it is studying the role local authorities and local communities should play in crime prevention, with a view to determining the most efficient forms of co-operation among the agencies concerned. In carrying out this task the Committee takes into account the work undertaken by the Congress of Local and Regional Authorities of Europe (CLRAE) in the area of the prevention of crime and urban insecurity, as well as that of other international organisations.

A project on urban insecurity and preventive measures in C.I.S. countries was implemented in Ukraine and Moldova and is currently underway in the Russian Federation. It is aimed at assisting these countries in developing modern crime prevention policies to fight urban insecurity in bigger cities by identifying and analysing the specific problems and proposing suitable preventive policies directed at improving the safety of everyday life. The project is being carried out in co-operation with the Congress of Local and Regional Authorities of Europe and draws on the experience of a number of outside bodies such as national crime prevention councils, as well as various relevant pilot projects. International teams of experts have worked in Ukraine (L'viv) and in Moldova (Chisinau). They have established detailed assessment reports which contain a number of useful recommendations. These reports could serve as a basis for the development and implementation of crime prevention policies and practices in other countries as well.

b) Concerning point ii of paragraph 17

A multidisciplinary and pluri-annual Integrated Project on “Responses to violence in everyday life in a democratic society” was launched by the Secretary General in 2001. It became operational in 2002. Its purpose is to induce policy change at national, regional and local levels in co-operation with the civil society at large with a view to contributing to the efforts of developing viable and practical solutions to threats to individual security in everyday life (especially in urban areas), in particular through education and prevention programmes, and, where appropriate, legal instruments, based on Council of Europe principles.

c) Concerning point iv of paragraph 17

The European Crime Prevention Network, which was created by a decision⁷ of the Council of the European Union on 28 May 2001, adopted at its first meeting on 25 June 2001 its programme which sets priorities and objectives for the period July 2001 – December 2002. The need to build on the work done by the Council of Europe, namely the outcome of the work carried out by the PC-PA Committee, is specifically mentioned.

In view of these activities, the CDPC proposes to await the outcome of the work of the PC-PA Committee, expected for 2003, before deciding on the setting-up of a European observatory as it has been recommended by the Parliamentary Assembly. At that time it would also be possible better to assess the experience with the EU Crime Prevention Network.

⁷ OJ L 153, 8.6.2001

APPENDIX

Recommendation 1531 (2001)⁸

Security and crime prevention in cities: setting up a European observatory

1. Insecurity has become a major concern of urban societies. In the face of the growth in both petty and serious crime, violence and anti-social behaviour, what is expected of political authorities is rapid action and practical solutions.
2. This situation, in which most European countries find themselves, has made security an essential issue in elections; the contenders are obliged to react to their fellow citizens' concerns.
3. The Parliamentary Assembly is aware that this phenomenon is mainly a result of persistent unemployment, changes in the family unit, the pressures of the consumer society, social exclusion, the often difficult integration of immigrant population groups and inadequacies in urban policy.
4. Unfortunately, growing concern among the public enables extremist movements to expound their xenophobic and racist theories, to lay the blame on scapegoats such as young people or immigrants, and consequently to place in jeopardy the principles of democracy, social cohesion and tolerance in which our societies must have their basis.
5. The Assembly believes that both genuine insecurity and the sense of insecurity and desertion felt by many people in Europe should stir the political authorities to action at all levels – local, national and European – with the aim of promoting security policies and developing instruments geared to the simultaneous implementation of specific neighbourhood policies and joint international measures.
6. From this point of view, it endorses the new strategies to combat insecurity based on improved co-ordination of preventive, repressive and solidarity-oriented measures. These strategies rely not only on the commitment of the authorities concerned, but also on active partnerships between economic and social operators and restoration of the traditional roles of the family, schools, businesses and civil society.
7. Furthermore, the Assembly is firmly convinced that appropriate responses to these challenges can but result from concerted action by the main national authorities concerned, but must at the same time involve greater co-operation between municipal authorities both within individual countries and at European level.

⁸ *Assembly debate* on 24 September 2001 (25th Sitting) (see [Doc. 9173](#), report of the Committee on the Environment and Agriculture, rapporteur: Mr Bockel). *Text adopted by the Assembly* on 24 September 2001 (25th Sitting).

8. In this connection, it is important to verify the usefulness, at least in certain countries, of giving mayors increased security powers, so that, without weakening responsibilities exercised at national level, they can take all the action needed to ensure the chosen policy's success.
9. It is therefore a question of ensuring the integration, at European level, of security and crime prevention policies and urban development programmes, while respecting the principle of subsidiarity.
10. With this aim in mind, the pooling of knowledge must become a key focus of security strategies, so that the positive experience already acquired by certain countries and municipalities can be of benefit to as many people as possible and comparisons between different situations make it possible to choose the most appropriate solutions in matters of urban security on the basis of similar experiences.
11. To that end, it is necessary to promote exchanges between municipal authorities, to foster training of local administrators and to design and implement joint policies in respect of transnational phenomena such as racism, drugs, prostitution, clandestine migration and the trafficking in humans that it gives rise to.
12. It is in this context that the European Union has taken the initiative of establishing a European crime prevention network. The Assembly welcomes this initiative and is of the opinion that its extension to a larger number of countries should be possible.
13. Moreover, the Assembly points out that at the intergovernmental level the Council of Europe has done some important work in this field, in particular with regard to crime, drugs and social cohesion, which would constitute a significant asset in such a venture.
14. Crime and urban insecurity have also been addressed in reports of the Congress of Local and Regional Authorities of Europe (CLRAE), which has recognised experience in the field of training local authority staff and elected representatives. The Congress is, moreover, currently preparing a manual on local government policies aimed at reducing crime.
15. The Assembly also welcomes the holding of the Safety and Democracy Forum (Naples, 7 to 9 December 2000), which brought together 120 European towns and cities to discuss these themes. It concurs with the conclusions set out in the manifesto adopted at the forum, in particular the proposal to establish a European observatory that could draw comparisons between municipalities, offer training courses for various public officials and improve knowledge in the field of urban security.
16. The Assembly is also aware that neither new measures nor the political determination of decision makers to solve the problems of urban security can produce results in practice unless additional funding is provided.

17. The Assembly therefore recommends that the Committee of Ministers:

i. give appropriate priority to urban security problems in the intergovernmental work programme and at the level of other Council of Europe bodies;

ii. establish a European observatory on urban security, which, at the level of Council of Europe member states, would be responsible for:

a. gathering, analysing and making available to all parties concerned information on crime and the operation of systems of justice in the different countries;

b. keeping a regularly updated register of the security practices which bring the best results;

c. organising exchanges between those in charge of security policies;

d. offering training courses for security policy agents;

iii. invite the Congress of Local and Regional Authorities of Europe to pursue its work in this field and become involved in the establishment of an observatory;

iv. ensure proper co-ordination between initiatives of this kind, to be taken at the level of the Council of Europe, and the creation of a network as proposed by the European Union.

A P P E N D I X X I

OPINION

ON ASSEMBLY RECOMMENDATION 1543 (2001): RACISM AND XENOPHOBIA IN CYBERSPACE

At the 762nd meeting of their Deputies on 5 September 2001 (Decision N° CM/799/05092001), the Committee of Ministers assigned ad hoc terms of reference to the CDPC, instructing it to give, by 31 March 2002 (extended to 30 June 2002) an opinion on Assembly Recommendation 1543 (2001) on racism and xenophobia in cyberspace⁹, adopted on 8 November 2001.

At its 51st plenary session from 17 to 21 June 2002, the CDPC examined this Recommendation and adopted the following

Opinion

In general, the CDPC welcomes the Assembly's recommendation to supplement the Convention on Cybercrime by an addition protocol on racism and xenophobia. In this context, it recalls the significant contribution made by the Assembly to the negotiations of the Convention itself.

The CDPC would like to point out that the Assembly's Recommendation was transmitted immediately after its adoption to the Committee of Experts on the criminalisation of racist or xenophobic acts using computer networks (PC-RX), which thus was able to take it fully into account in its discussions.

Concerning points i and ii of paragraph 8

As recommended by the Assembly, the PC-RX Committee has completed its task by 30 April 2002. The draft Protocol was unanimously approved by the CDPC at its 51st plenary session in June 2002 and submitted to the Committee of Ministers for adoption. In this context, the CDPC notes that the terms of reference for Committee PC-RX were adopted by the Ministers' Deputies on 19 September 2001 (765th meeting); the Assembly's recommendation to deal with unlawful hosting was therefore not taken into account.

Although the text of the draft Protocol does not specifically address the issue of unlawful hosting, the draft Explanatory Report clarifies the situation with regard to service providers. Paragraph 25 states that "it is not sufficient, for example, for a service provider to be held criminally liable under this provision, that such a service provider served as a conduit for, or hosted a website or newsroom containing such material, without the required intent under domestic law in the particular case. Moreover, a service provider is not required to monitor conduct to avoid criminal liability."

⁹ The Recommendation appears in the appendix to the present opinion.

Concerning point iii of paragraph 8

Finally, the CDPC would like to point out that the criminalisation of a certain number of conduct by the draft Protocol (cf. Articles 3 – 7) will largely serve the purposes indicated by the Assembly, i.e. “to eliminate racist sites from the Internet and to encourage the effective prosecution of those responsible”. The very idea of the draft Protocol, as stated in the Preamble (6th paragraph), stems from the consideration that “national and international law need to provide adequate legal responses to propaganda of a racist and xenophobic nature through computer systems”.

APPENDIX

Recommendation 1543 (2001)¹⁰ Racism and xenophobia in cyberspace

1. The Assembly considers racism not as an opinion but as a crime. The relevant international legal instrument to combat racism is the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). The Assembly deplores that Andorra, Moldova and San Marino have not yet ratified this instrument.
2. Adequate legal instruments to combat racism already exist in some Council of Europe member states. The difficulties of combating racism on the Internet arise from the nature of this means of disseminating information itself and from the legal obstacles to the implementation of provisions against hate speech.
3. The Council of Europe now has a binding legal instrument: the Convention on Cybercrime, but that convention does not address the dissemination of racist propaganda using computer technology. An *ad hoc* committee of experts, with terms of reference approved by the Committee of Ministers, should be asked to prepare a protocol to remedy this shortcoming of the convention, as requested by the Assembly in its Opinion No 226 (2001).
4. An additional protocol to the Convention on Cybercrime aimed at punishing racism on the Internet will have no effect unless every state hosting racist sites or messages is a party to it. The Assembly's starting-point is that a dialogue must be initiated with all service providers to convince them of the need to take steps themselves to combat the existence of racist sites.
5. On an ethical level, the Assembly believes that the self-disciplinary efforts made by access providers and hosts should be encouraged. Self-discipline should be made the norm by labelling and classifying sites, setting up hotlines, filtering, drawing up rules of conduct and including clauses in contracts with technical providers prohibiting their clients from using their services for unlawful purposes.
6. Dialogue between Internet users, technical operators and prosecuting authorities must be encouraged. The Assembly considers that a consultation or joint regulation body could be set up within the Council of Europe to help prepare codes of conduct, serve as a mediator in specific disputes and function as a permanent observatory of racism and xenophobia on the Internet.
7. The Assembly would like education and training aimed at developing the discernment of Internet users, particularly the younger generations, to play an important role in the future. Not only racism, but also the dissemination of hate speech against certain nationalities, religions and social groups must be opposed.

¹⁰ Text adopted by the Standing Committee, acting on behalf of the Assembly, on 8 November 2001 (see Doc. 9263, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Tallo).

8. For these reasons, the Parliamentary Assembly, in accordance with its Opinion No. 226, in which it recommended that an additional protocol to the new convention be immediately drawn up, defining and criminalising the dissemination of racist propaganda and unlawful hosting of hate messages, recommends that the Committee of Ministers:

i. give the Committee of Experts on the criminalisation of racist or xenophobic acts using computer networks (PC-RX), which has been instructed to prepare a draft additional protocol to the Convention on Cybercrime, sufficient means to enable it to complete its task by 30 April 2002, when its terms of reference expire. The committee should complete its work in time for the additional protocol to come into force as soon as possible after the entry into force of the convention;

ii. make specific mention of unlawful hosting in the terms of reference of this committee;

iii. specify the means by which it is possible to eliminate racist sites from the Internet and to encourage the effective prosecution of those responsible.

A P P E N D I X X I I

OPINION

ON ASSEMBLY RECOMMENDATION 1545 (2002): CAMPAIGN AGAINST TRAFFICKING IN WOMEN

By Decision No. CM/822/06022002, adopted at the 782nd meeting of their Deputies on 6 February 2002, the Committee of Ministers invited the CDPC to give, by 30 September 2002, an opinion on Parliamentary Assembly Recommendation 1545 (2002) on the campaign against trafficking in women¹¹.

At its 51st plenary session from 17 to 21 June 2002, the CDPC examined this Recommendation and adopted the following

Opinion

1. The CDPC welcomes the Recommendation and shares the Assembly's concern regarding trafficking in human beings – women constituting a large proportion of the victims of trafficking. This crime form undermines basic human rights, the rule of law and democracy; it requires urgent concerted crime policy action in Europe. However, the CDPC does not agree with the blanket qualification of trafficking in women as a crime against humanity (para. 2 of the Recommendation). Under certain conditions, notably when the act is “committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”, enslavement in the context of trafficking in persons has been defined in international law as a crime against humanity (Rome Statute of the International Criminal Court, Article 7). The vast majority of trafficking cases, however, would not fall within this category.
2. By virtue of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention against Trans-national Organized Crime (Palermo, 2000), an acceptable international definition of trafficking in human beings does exist and measures to be taken at the national level have been agreed upon. According to Article 5 of the UN Trafficking Protocol, an obligation of States Parties exists to establish as criminal offences the actions set out in Article 3 of the Protocol. These actions include trafficking in human beings for the purpose of exploitation, including forced labour or slavery.
3. The CDPC fully endorses the definition contained in article 3 of the UN Protocol and would encourage its implementation in the national legislation of Council of Europe member States.
4. The CDPC would encourage the removal of any legal loopholes which facilitate trafficking. In this context it would like to point out the Council of Europe's work in this area from the perspective of crime problems.

¹¹ The Recommendation appears in the appendix to the present opinion.

5. A number of Council of Europe Recommendations are devoted to such issues as sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults (Recommendation R (91) 11) and action against trafficking in human beings for the purpose of sexual exploitation (R (2000) 11), and, most recently, on the protection of children against sexual exploitation (Rec. R (2001) 16). This last Recommendation, while devoted to minors, puts a particular emphasis on the problem of trafficking. Under section VI, the following measures are proposed:

"55. Introduce appropriate criminal sanctions for trafficking in children taking into account the gravity of the offence.

56. Organise information campaigns in order to increase public awareness of high risk situations that may lead to organised trafficking in children, mainly girls.

57. Provide information on trafficking in and sexual exploitation of children and appropriate training to diplomatic and consular representatives, public authorities, the media, NGOs and other public and private bodies working in the countries of origin of potential victims.

58. Disseminate widely, in every member state, information on the risk that trafficking in, and sexual exploitation of, children entails to the life as well as the mental and physical health of children.

59. Make media more aware of issues related to trafficking in children and their role to prevent it.

60. Ensure that school curricula include information on risk of sexual exploitation and trafficking in children and ways of protecting themselves; this information should be also available to children outside the education system and to parents and guardians or other legal representatives of children.

61. Organise special training for diplomatic, consular, judicial, customs and police personnel to enable them to identify cases of trafficking in children for the purpose of sexual exploitation and respond appropriately."

6. It is relevant here to mention the body of Council of Europe conventions concerning international cooperation in criminal matters, the proper implementation of which must be assured in the interest of combating trafficking in human beings where more than one State is directly concerned by the case.

7. The CDPC would also like to bring to the Assembly's attention the LARA project (Trafficking in Human beings – criminal law reform in South-eastern Europe), which aims at contributing to the effective criminalisation of trafficking in human beings and the protection of victims' human rights in South-eastern Europe in accordance with Recommendation No R(2000)11 of the Committee of Ministers on action against trafficking in human beings for the purpose of sexual exploitation, and the aforementioned UN Protocol. The project approaches trafficking in human beings as a violation of human rights and as an issue of organised crime. South-eastern Europe is targeted by this project as it is an area which is particularly affected by issues (also raised at paras 7 and 8 of the Assembly Recommendation)

of economic transition and the (post)conflict-related weakening of the rule of law, which provide a fertile ground for trafficking in human beings.

8. The project draws on the conclusions of a Regional Training Session on Criminal Law Reform (Belgrade, 23–24 November 2001) and builds on the experience of the Council of Europe's pilot project on criminal law reform on trafficking in human beings which involved Romania and Moldova and which was carried out from October 2001 to February 2002.

9. The PACO (Programme against corruption and organised crime in South-eastern Europe) networking project is also focussing on trafficking in human beings, as well as corruption. In particular, it is dealing with international judicial co-operation (improving cooperation among justice operators, but also civil society's interaction with criminal justice and law enforcement across borders) and the intersection of corruption and trafficking, which is believed to undermine the fight against trafficking. A regional seminar on these issues is being held from 19-22 June 2002 in Portorož (Slovenia), which proposes *inter alia* to produce a common cooperation manual, as well as country-specific guidelines on the two topics.

10. With regard to particular issues raised by the Assembly's Recommendation, the CDPC would like to make the following remarks:

11. The issue of extraterritorial criminal jurisdiction (paragraph 7) is a complex one, on which the CDPC produced a comparative report in 1990. Although the nature and outlook on extraterritorial jurisdiction varies significantly from State to State, the CDPC finds that, despite these differences, extraterritorial jurisdiction has been used in cases of sexual exploitation of minors and could also prove to be a useful mechanism to counter jurisdictional obstacles in cases of trafficking in human beings. Paragraph 28 of Recommendation (2001) 16 on the protection of children against sexual exploitation also specifically recommends the criminalisation of the acts described in the Recommendation regardless of whether the acts are committed within or outside the territory of the State.

12. Concerning paragraph 10 (i), the CDPC endorses the UN Protocol definition of trafficking, as stated above (para. 4). In addition to traffickers, the criminalisation of the acts of 'clients' of trafficking, i.e. of those who knowingly use the services of victims of trafficking, could possibly be considered as an aggravating element where the client's interaction with the victim would already constitute a criminal offence.

13. Regarding the Assembly's call (paragraph 10 (ii)) for the appointment of national rapporteurs, which already exist in some member States, the CDPC endorses the principle of coordination of action against trafficking at national level.

14. Regarding the promotion of research, mentioned in paragraph 10 (iv), the CDPC would encourage such research as it did with respect to trafficking in children in Recommendation (2001) 16.
15. Regarding paragraph 10 (v), the CDPC is of the opinion that sex tourism should be discouraged through various means of awareness-raising education and general information. In particular, it refers to paragraphs 53 and 54 of Recommendation (2001) 16, which provide that the tourism industry should be involved in awareness raising and detection of sex tourism and that Governments should organise information campaigns to discourage potential sex tourists.
16. On use of the Internet, mentioned in paragraph 10 (v), the CDPC would like to refer to the criminalisations provided in the Convention on Cybercrime, in order to combat child pornography acts facilitated by a computer system.
17. Regarding paragraph 10 (vi), the CDPC would like to point out that in a number of countries cooperation agreements exist between anti-trafficking organisations and the criminal justice system. The PACO networking project (see paragraph 10 above) is examining the lessons to be learned from these agreements. Cooperation aspects raised in paragraph 10 (viii) of the Assembly's Recommendation are being directly addressed in the context of the PACO networking project.
18. As to the criminal justice system's support to victims of trafficking, the CDPC refers to the Recommendations prepared over the past decades concerning victims, which are relevant also in the context of trafficking in women: Recommendation R (85) 11 on the victim's position in the framework of criminal law and procedure; R (87) 21 on assistance to victims and the prevention of victimisation; and R (97) 13 concerning intimidation of witnesses and the rights of the defence. With the growing awareness of the problem of trafficking in women, crime policy in Europe is evolving, so that the victims of trafficking are no longer regarded as migration criminals but as victims of crime. Regarding compensation to victims (paragraph 10 (ix) (d)), the CDPC would like to mention the 1983 European Convention on the Compensation of Victims of Violent Crimes.
19. Regarding the effective punishment of traffickers (paragraph 10 (x)), and in addition to the comments made in paragraphs 6–12 above, the CDPC would endorse the call for penalties which adequately reflect the seriousness of the offence.
20. The CDPC would also endorse the inclusion of trafficking in women in the category of serious crimes to which measures for the confiscation of crime proceeds apply. In this context, it refers to the 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.
21. Regarding paragraph 11 of the Assembly's Recommendation, the CDPC would point out that discussions are presently under way with regard to the feasibility of concluding a Council of Europe Convention on Trafficking in Human Beings, which would take as their basis both Recommendation (2000) 11 on action against trafficking in human beings for the purpose of sexual exploitation and Recommendation (2001) 16 on the protection of children

against sexual exploitation. If such a Convention were to be negotiated, the CDPC considers that the advisability of a monitoring mechanism should be discussed.

APPENDIX

Recommendation 1545 (2002)¹² Campaign against trafficking in women

1. Trafficking in women is a phenomenon which is a violation of human rights and the basic principles of rule of law and democracy. The massive increase in the number of victims trafficked in Europe over the last few years demands immediate action from European countries to stop the spreading of this modern form of slavery.
2. Trafficking is a human rights issue as it entails the violation of women's dignity and integrity, their freedom of movement and, in some cases, their right to life. As far as the individual is concerned, it affects the very foundations of human rights: the equal dignity of all human beings. Trafficking should be considered a crime against humanity.
3. In European societies, trafficking is a very complex subject which is closely linked to prostitution and hidden forms of exploitation, such as domestic slavery, catalogue marriages and sex tourism. Some 78% of women victims of trafficking are, in one way or another, exploited sexually.
4. Trafficking in women is a large and growing global business, generating huge profits for traffickers and organised crime. The increasing demand in the member states of the Council of Europe has led to the fact that the turnover from this criminal activity has reached third place after drug and arms trafficking.
5. This phenomenon goes hand-in-hand with migration. According to the International Organization for Migration, more than 500 000 financially vulnerable women from central and eastern European countries have been displaced during the last year by networks of traffickers in order to exploit them in western Europe. Traffickers are filling the gap between the high demand for migrant labour on the one hand, and the diminishing legal channels of migration in most countries on the other hand.
6. This form of organised crime has serious effects on the physical and moral health of its victims. They suffer from the worst forms of sexual, physical and psychological violence and run the danger of physical disability and social exclusion.
7. The main cause of this form of organised crime is poverty, which is a direct result of the transition to a market economy in the countries of origin of the victims. Organised crime takes advantage of women's desire to earn money abroad and exploits them brutally in prostitution or domestic work particularly in western countries. The improvement of the economic situation in the countries of origin, the adoption and enforcement of national legislation recognising trafficking in women as a criminal offence, and the application of

¹² *Assembly debate* on 21 January 2002) (1st Sitting) (see [Doc. 9190](#), report of the Committee on Equal Opportunities for Women and Men, rapporteur: Mrs Err; and [Doc. 9225](#), opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mrs Wohlwend).
Text adopted by the Assembly on 21 January 2002 (1st Sitting).

extraterritorial jurisdiction for this crime are the main conditions for the prevention of the increase in trafficking in women in Europe.

8. The Assembly is very concerned that trafficking in women has increased dramatically in conflict and post-conflict areas, such as the Balkans, where the problem is compounded by the instability of civil societies and the weakened rule of law. The large presence of military staff in the region has created the demand and has attracted traffickers who seek to take advantage of this situation. This makes necessary the elaboration of a code of conduct drawing the attention of the military forces to the problem of gender issues.

9. Realising the global scale of the phenomenon of trafficking in women and its serious consequences, the Assembly welcomes the efforts of international organisations, and of the European Union in particular, in combating this crime, and calls on all European countries to develop common policies and actions covering all aspects of this problem: comprehensive statistics and research into the causes and mechanisms of trafficking, law enforcement, prevention, protection of victims, repression and awareness-raising and information campaigns.

10. The Assembly therefore urges the governments of member states:

- i. to make trafficking in women or to knowingly use the services of a woman victim of trafficking a criminal offence under national law, and to strengthen legislation and enforcement mechanisms which punish traffickers and clients of women who are victims of trafficking;
- ii. to appoint a national rapporteur on trafficking in human beings in each country affected by this problem. The office of the rapporteur should elaborate and implement the national plan of action against trafficking taking into account the specificities of the situation in each country;
- iii. to draw up annual reports to their parliaments on the situation in their countries and on their activities designed to prevent trafficking in women;
- iv. to encourage national and international research into the problem of trafficking in women in order to better understand and fight this phenomenon;
- v. to penalise sex tourism and to make all activities which might lead to forms of trafficking, including domestic slavery and marriages by catalogue using the Internet, criminal offences;
- vi. to create a legislative framework for voluntary organisations which defend victims of trafficking allowing them to take legal action against traffickers, either in conjunction with the victims or on their behalf, with the aim of obtaining damages;

vii. to exclude the practice of restricting the freedom of movement of women going to western European countries to study, to work or with other legal objectives, by denying them visas;

viii. to take the following steps regarding the prevention of trafficking in women:

a. establish bilateral agreements between destination countries and the countries of origin of victims which should cover legal and police co-operation and humanitarian aspects of this problem, including information and prevention campaigns, and training and assistance programmes for the rehabilitation of victims;

b. create special police services and make them aware of the fight against trafficking and forced prostitution. Such services should have direct contacts with Interpol and Europol in order to ensure an exchange of information on trafficking networks and efficient collaboration in the detention of criminals;

c. encourage constant co-operation and interaction between non-governmental organisations, consulates and police services responsible for the fight against trafficking;

d. set up, in close co-operation with the countries of origin, prevention programmes focusing in particular on the deep-seated causes of trafficking in women, namely the inequality between women and men on the labour market, in education and in access to certain professions, the feminisation of poverty and violence against women;

e. launch large information and awareness-raising campaigns aimed at all professionals who, by the very nature of their work, could be in contact with victims of trafficking and traffickers themselves. These campaigns should address officials of ministries particularly concerned with the problem of trafficking, customs and police services, diplomatic representatives, public authorities, the media and non-governmental humanitarian organisations;

f. launch sex education programmes in schools, with particular emphasis on equality between women and men and the respect for human rights and individual dignity. School curricula should include information on the risks of exploitation, sexual abuse and trafficking in human beings. Teachers should be trained in such a way as to incorporate a gender dimension into their teaching and to avoid gender stereotyping;

g. encourage the mass media to cover the work of non-governmental organisations, police services and parliamentary assemblies in fighting trafficking;

h. carry out permanent monitoring of advertisements in order to detect hidden information about networks of illegal transportation of human beings and illegal employment, and develop effective mechanisms of responsibility for such advertisements;

ix. to adopt the following measures regarding victims of trafficking:

a. give specific protection to victims;

b. set up shelters for trafficking victims modelled on those already functioning in Italy, Belgium and Austria;

c. establish telephone hotlines in capital cities and in different regions of each country providing information to potential trafficking victims and their families and assisting those who have fallen victims to trafficking;

d. introduce a right to compensation, insertion and rehabilitation for victims and set up a support body to help their voluntary return to their countries of origin or allow them to stay in the host countries, if they so wish;

e. take all necessary measures to protect victims and witnesses wishing to testify, and assuring protection for their families in their countries of origin;

f. increase the state financing of the social services specialised in assistance to the victims of trafficking and prostitution;

g. grant residence permits of a permanent nature to victims of trafficking for those who are willing to testify in court and need protection, and of a temporary but renewable nature for all others on humanitarian grounds;

h. create information and consultancy services in embassies and consulates of the countries of destination of these women in their countries of origin, where women who are taking up employment abroad can find necessary information and addresses of embassies and non-governmental organisations in the countries of destination which provide assistance to women victims of trafficking;

x. to introduce effective punishment of traffickers by:

a. extraditing or prosecuting nationals for offences committed abroad and establishing rules governing extra-territorial jurisdiction, irrespective of the country where the offences were committed, and including cases where the offences took place in more than one country and irrespective of whether there has been a complaint from the country or countries in question;

b. introducing penal sanctions for knowingly using the services of a woman who is a victim of trafficking;

c. making the punishment of traffickers at the very least similar to those for traffickers in drugs and weapons;

d. including in penalties the seizure and confiscation of the sizeable earnings traffickers make, and the closure of establishments in which victims are exploited. A part of confiscated profits should be allotted to insertion and rehabilitation centres and shelters for victims. Offenders should also pay compensation to the victims of trafficking;

e. providing legal assistance to victims of trafficking and considering the introduction of special rules in civil proceedings engaged by victims against their traffickers, such as lightening the burden of proof with regard to the use of force.

11. The Assembly recommends that the Committee of Ministers:

i. create a European observatory on trafficking in order to:

a. take the necessary measures to launch information and awareness-raising campaigns against trafficking in women and children in all the member countries;

b. establish an international network of experts on trafficking in women and children to facilitate the exchange of information and expertise;

c. study the effects of using new information technologies on trafficking in women and children, as well as their impact on the victims of trafficking;

d. conduct, in co-operation with other international organisations, systematic research into trafficking in women and children;

ii. elaborate a European convention on trafficking in women, open to non-member states, based on the definition of trafficking in women included in Committee of Ministers Recommendation No. R (2000) 11 on action against trafficking in human beings for the purpose of sexual exploitation. This convention should:

a. focus on assistance to and the protection of victims of trafficking, by obliging the states parties to grant legal, medical and psychological assistance to such victims, by ensuring their physical safety and that of their families, and by granting special residence permits to victims on humanitarian grounds, and permanent residence permits to those willing to testify in court and in need of witness protection;

b. stipulate repressive measures to combat trafficking through harmonisation of laws particularly in the penal field, and opening new channels for improved transfrontier police and judicial co-operation;

c. take measures to exclude the participation of the police and other civil servants in trafficking in women;

d. include a non-discrimination clause modelled on the one proposed by the Assembly in Opinion No. 216 (2000) on draft Protocol No. 12 to the European Convention on Human Rights;

e. establish a control mechanism to monitor compliance with its provisions; and

f. be submitted in draft form to the Assembly for opinion;

iii. implement Recommendation No. R (2000) 11 and transmit it to the Human Rights Commissioner.